

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DALE E. BOEWE,
CDCR #V-45728,

Plaintiff,

vs.

DR. HILL. et al.,

Defendants.

Civil No. 08-0903 L (PCL)

**ORDER TRANSFERRING CIVIL
ACTION FOR LACK OF PROPER
VENUE TO THE CENTRAL
DISTRICT OF CALIFORNIA,
EASTERN DIVISION,
PURSUANT TO 28 U.S.C. § 84(c)(1),
28 U.S.C. § 1391(b) AND
28 U.S.C. § 1406(a)**

Dale E. Boewe ("Plaintiff"), a state inmate formerly incarcerated at the California Institution for Men in Chino, California, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. In his Complaint, Plaintiff alleges that he was denied adequate medical care by prison officials at the California Institutional for Men when he was incarcerated there in violation of his Eighth Amendment rights.

Plaintiff has not prepaid the \$350 civil filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

I. LACK OF PROPER VENUE

Upon initial review of the Complaint, the Court finds that Plaintiff's case lacks proper venue. Venue may be raised by a court sua sponte where the defendant has not yet filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790 F.2d 1486,

1 1488 (9th Cir. 1986). “A civil action wherein jurisdiction is not founded solely on diversity of
2 citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district
3 where any defendant resides, if all defendants reside in the same State, (2) a judicial district in
4 which a substantial part of the events or omissions giving rise to the claim occurred, or a
5 substantial part of property that is the subject of the action is situated, or (3) a judicial district
6 in which any defendant may be found, if there is no district in which the action may otherwise
7 be brought.” 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488; *Decker Coal Co. v.*
8 *Commonwealth Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986). “The district court of a district
9 in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in
10 the interests of justice, transfer such case to any district in or division in which it could have
11 been brought.” 28 U.S.C. § 1406(a).

12 Here, Plaintiff claims constitutional violations based on events which are alleged to have
13 occurred at the California Institution for Men, which is located in San Bernardino County. *See*
14 *Compl.* at 1-3. Moreover, no defendant is alleged to reside in the Southern District. *See* 28
15 U.S.C. 84(d) (“The Southern District [of California] comprises the counties of Imperial and San
16 Diego.”). Instead, Defendants are instead alleged to reside in Los Angeles and San Bernardino
17 Counties. *See Compl.* at 1-3; *see also* 28 U.S.C. § 84(c) (“The Central District [of California]
18 comprises 3 divisions. (1) The Eastern Division comprises the counties of Riverside and San
19 Bernardino.”).

20 Therefore, venue is proper in the Central District of California, Eastern Division, pursuant
21 to 28 U.S.C. § 84(c)(1), but not in the Southern District of California. *See* 28 U.S.C. § 1391(b);
22 *Costlow*, 790 F.2d at 1488.

23 **II. CONCLUSION AND ORDER**

24 Accordingly, **IT IS HEREBY ORDERED** that the Clerk of the Court shall transfer this
25 case for lack of proper venue, in the interests of justice and for the convenience of all parties,
26 to the docket of the United States District Court for the Central District of California, Eastern
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1 Division, pursuant to 28 U.S.C. § 84(c)(1), 28 U.S.C. § 1391(b) and 28 U.S.C. § 1406(a).¹

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3 DATED: June 5, 2008

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5 M. James Lorenz
6 United States District Court Judge
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28 ¹ Because the Court finds transfer appropriate, it defers ruling on Plaintiff's Motion to Proceed IFP to the Central District [Doc. No. 2] and expresses no opinion as to whether Plaintiffs' Complaint states claims sufficient to survive the mandatory sua sponte screening provisions of 28 U.S.C. §§ 1915(e)(2) & 1915A.

UNITED STATES DISTRICT COURT

Southern District of California

Office Of The Clerk
880 Front Street, Room 4290
San Diego, California 92101-8900
Phone: (619) 557-5600
Fax: (619) 702-9900

W. Samuel Hamrick, Jr.,
Clerk of Court

June 5, 2008

Clerk, U.S. District Court
Central District of California, Eastern Division
3470 Twelfth Street
Riverside, CA 92501

Re: Dale E Boewe v. Hill, et al., Case No. 3:08-cv-00903-L-PCL

Dear Sir or Madam:

Pursuant to Order transferring the above-entitled action to your District, we are electronically transmitting herewith our entire original file.

Sincerely yours,

W. Samuel Hamrick, Jr.,
Clerk of the Court

By: s/ M. Jenkins, Deputy Clerk

Copy to Attorney for Plaintiffs:
Copy to Attorney for Defendants: